

## **REMARKS**

### **I. Status of Claims and Claim Amendments**

In this amendment, claim 22 was amended to incorporate the elements of claim 30. Claim 30 has been cancelled. After entry of this amendment, claims 22, 26, 27, 35-40, and 43-49 will be pending in the application and under examination.

No new matter has been introduced.

Applicants respectfully submit that entry and consideration of this amendment is appropriate pursuant to 37 C.F.R. 1.116, as this amendment only cancels subject matter and therefore narrows issues for appeal.

### **II. Response to Rejections Under 35 USC §102(a)**

At page 4 of the Office Action, claims 22, 26, 35, 37, 38, 39, 40, 45, 46, and 49 have been rejected under 35 U.S.C. §102(a) as being anticipated by Deiwick *et al.* (Journal of Bacteriology, 180(18): 4775-4780). Applicants respectfully traverse the rejections.

Deiwick *et al.* is not available as prior art against the above-referenced application, and therefore cannot anticipate the claimed subject matter. The Examiner presumes that Deiwick *et al.* was published on September 1. As evidenced by the attached screen captures from the Journal of Bacteriology website, however, this journal publishes twice each month (See Exhibits 1 and 2). Moreover, the Deiwick *et al.* reference was published in volume 18 of the Journal of Bacteriology, which was the second bi-weekly publication for the month of September in 1998. It is reasonable to assume, therefore, that volume 18 of the Journal of Bacteriology was not made publicly available until closer to the middle of September 1998, well after Applicant's priority date of September 4, 1998. Applicants again point to the Declaration under 37 C.F.R. 1.132 of Dr. Darren R. Ritsick filed December 28, 2007, who testified that he contacted the Cushing/Whitney Medical Library at Yale University who advised him that the library received that volume of the Journal of Bacteriology on September 21, 1998. Dr. Ritsick also testified that he contacted the Welch Medical Library at Johns Hopkins Medical Institutes who advised him that the library received the volume on September 14, 1998. These dates are consistent with a mid-month publication, as would be expected for the second volume published that month.

In view of Dr. Ritsick's declaration and the fact that Deiwick *et al.* was not published until the second bi-weekly publication for the month of September in 1998, Deiwick *et al.* was not publicly available until after the earliest effective filing date (September 4, 1998) for the above-referenced application. Accordingly, Deiwick *et al.* is not available as prior art, and the rejection should be withdrawn.

Notwithstanding the above facts, Applicants have amended claim 22 to incorporate the limitations of claim 30 in order to clarify the invention and expedite prosecution. This amendment is clearly not made for purposes of patentability over Deiwick *et al.* as Deiwick is not prior art to the present invention.

Amended claim 22 now specifies that the effector (*sse*) gene is selected from the group consisting of *sseC*, *sseD* and *sseE*. Although the Office Action rejected claim 30 under 35 U.S.C. §102(a) as being anticipated by Deiwick *et al.* (p. 7), this rejection is clearly erroneous. Deiwick *et al.* fails to teach the specific genes listed. In any case, Deiwick *et al.* is not available as prior art against the above-referenced application and therefore cannot anticipate the claimed subject matter. Reconsideration and withdrawal of the rejection under §102(a) based on Deiwick *et al.* are respectfully requested.

### III. Response to Rejections Under 35 USC §103(a)

At page 5 of the Office Action, claims 22, 40, and 43 have been rejected under 35 U.S.C. §103(a) as being obvious over Deiwick *et al.* in view of Tsolis *et al.* (*Infection and Immunity* 63(5): 1739-1744 (1995)). Applicants traverse this rejection to the extent it is applied to claims as amended.

As discussed above, Deiwick *et al.* is not available as prior art as it was published after the priority date of the present application. Moreover, it does not disclose or suggest attenuated strains of *Salmonella* in which an *sse* gene selected from the group consisting of *sseC*, *sseD* and *sseE* has been inactivated. Tsolis *et al.* is cited as disclosing superoxide dismutase genes of *Salmonella typhimurium*. Because Deiwick *et al.* is not prior art and because Tsolis *et al.* does not make up for the deficiencies of Deiwick *et al.*, the rejection should be withdrawn.

III. Conclusion

The foregoing amendments and remarks are being made to place this application in condition for allowance. Applicants await favorable action. If the Examiner believes that an interview would be helpful to resolve any remaining issues in this application, the Examiner is invited to telephone the undersigned at the number below.

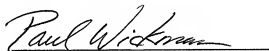
**Please charge the fee for a two-month extension of time to our Deposit Account No. 50-1283.** Please charge any additional fees deemed necessary and please credit any overpayments to the Deposit Account.

Dated: September 3, 2008

COOLEY GODWARD KRONISH LLP  
ATTN: Patent Group  
777 6<sup>th</sup> Street, NW, 10<sup>th</sup> Floor  
Washington, DC 20001-2421  
Tel: (202) 842-7800  
Fax: (202) 842-7899

Respectfully submitted,  
**COOLEY GODWARD KRONISH LLP**

By:

  
Paul A. Wickman, Ph.D.  
Reg. No. 61,242